

UNITED STATES DEPARTMENT OF JUSTICE  
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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

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In re:	:	Chapter 11
	:	
James Walter Lucas and	:	
Barbara Jean Lucas,	:	Case No. 16-32586(VFP)
	:	
Debtors.	:	Hearing Date: May 9, 2019 at 11:00 a.m.
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**LIMITED OBJECTION OF THE ACTING UNITED STATES TRUSTEE TO  
CONFIRMATION OF THE FIFTH AMENDED CHAPTER 11 PLAN OF  
JAMES WALTER LUCAS AND BARBARA JEAN LUCAS**

The Acting United States Trustee (“UST”), by and through his counsel, and in furtherance of his duties pursuant to 28 U.S.C. §586(a)(3) and (5), respectfully submits this limited objection (the “Limited Objection”) to confirmation of the Fifth Amended Chapter 11 Plan of James Walter Lucas and Barbara Jean Lucas (docket entry 118) (the “Plan”) filed by the above-captioned debtors (the “Debtors”), and respectfully represents as follows:

1. Pursuant to 11 U.S.C. §586, the UST is obligated to oversee the administration of Chapter 11 cases. Under 11 U.S.C. §307, the UST has standing to be heard on any issue in any case or proceeding under the Bankruptcy Code. Such oversight is part of the UST’s overarching responsibility to enforce the laws as written by Congress and interpreted by the courts. See United States Trustee v. Columbia Gas Systems, Inc. (In re Columbia Gas Systems, Inc.), 33

F.2d 294, 295-96 (3d Cir. 1994) (noting that the UST has “public interest standing” under 11 U.S.C. §307 which goes beyond mere pecuniary interest); Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.), 898 F.2d 498, 500 (6<sup>th</sup> Cir. 1990) (describing the United States Trustee as a “watchdog”).

### **BACKGROUND**

2. On November 28, 2016, the Debtors filed a voluntary petition for relief under Chapter 13 of title 11, United States Code (the “Bankruptcy Code”).
3. On June 9, 2017, the Order Converting Case to Chapter 11 (docket entry 51) was entered; this case has proceeded under Chapter 11 of the Bankruptcy Code to date.
4. An Unsecured Creditors' Committee has not been appointed in this case.
5. On November 26, 2018, the Debtors filed the Plan.

### **LIMITED OBJECTION**

#### ***Failure to File Monthly Operating Reports:***

6. The Debtors are not in compliance with the applicable provisions of this title as required by 11 U.S.C. § 1129(a)(2) because the Debtors have failed to timely file Monthly Operating Reports. As of the filing of this Limited Objection, the last monthly operating report filed by the Debtor is for the period October 2018 (docket entry 123); reports for the months of November 2018 through March 2019, inclusive, are all past due. Without monthly operating reports being brought current, the Debtors’ ability to perform the plan (as discussed more fully below) cannot be assessed at confirmation.

#### ***Feasibility / Performance of the Plan Remains Unclear:***

7. Pursuant to Section 1129(a)(11), every chapter 11 plan must be feasible in order to be confirmed. Section 1129(a)(11) provides that the Court shall confirm a plan only if the plan

is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor. The Debtors must demonstrate that the Plan has a reasonable chance of succeeding. See, In re Greate Bay Hotel & Casino, Inc., 251 B.R 213, 226 (Bankr. D.N.J. 2000).

8. It is respectfully asserted that, as a threshold matter, monthly operating reports need to be brought current so that the Debtors' performance in chapter 11, and ability to perform the Plan, can be assessed at confirmation.

WHEREFORE, the UST respectfully requests that the Court deny confirmation of the Chapter 11 Plan as presently presented, and grant further relief as the Court may deem just and proper.

Dated: Newark, New Jersey  
May 6, 2019

Respectfully submitted,  
ANDREW R. VARA  
ACTING UNITED STATES TRUSTEE  
REGION 3

By: /s/ Peter J. D'Auria  
Peter J. D'Auria  
Trial Attorney